

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BOGOTA

LIMITED OFFICIAL USE STATE 233905

E.O. 11652: N/A

TAGS: EAIR, CO

SUBJECT: CIVAIR - GOC FUEL TAXES AND VOLUME DISCOUNTS TO
AVIANCA

REF: (A) BOGOTA A-159 (B) BOGOTA 5292 (C) BOGOTA 6660

(D) STATE 148204 (E) STATE 117454

1. FOLLOWING POINTS SHOULD BE RAISED WITH APPROPRIATE GOC
OFFICIALS:

(A) CONTRARY TO STATEMENT IN MFA NOTE, WE UNDERSTAND THAT
ECOPETROL IS THE SOLE DISTRIBUTOR OF AVIATION FUEL PER-
MITTED FOR INTERNATIONAL FLIGHTS. WE BELIEVE THIS FACT
IS SIGNIFICANT SINCE IT DISTINGUISHES DISTRIBUTION SYSTEM
AT BOGOTA FROM SITUATION PREVAILING AT US POINTS WHERE
THERE IS NO GOVERNMENT RESTRICTION ON THE NUMBER OF SUP-
PLIERS OF SUCH FUEL.

(B) GOVERNMENT CONTROL OF ECOPETROL, THE MONOPOLY POSITION
OF ECOPETROL OVER THE FUEL DISTRIBUTION FOR INTERNATIONAL
FLIGHTS AND VOLUME DISCOUNTS GIVEN TO AVIANCA FOR NO
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APPARENT COMMERCIAL REASON SUGGEST DISCRIMINATORY PRAC-

TICES BY THE GOC AGAINST A US CARRIER IN VIOLATION OF ARTICLES 7 AND 8 OF THE BILATERAL AIR TRANSPORT AGREEMENT.

(C) UNILATERAL CAPACITY RESTRICTIONS ARE BUT ONE FORM OF

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DISCRIMINATION PROHIBITED UNDER ARTICLE 8. SINCE THE DISCOUNTS GIVEN TO AVIANCA EFFECTIVELY DISCRIMINATE AGAINST AND HARM BRANIFF, ARTICLE 8 REQUIRES THAT SUCH PRACTICES BE RESCINDED.

(D) ARTICLE 7 MENTIONED IN THE NOTE MAY NOT DIRECTLY DEAL WITH FUEL PRICE DISCRIMINATION BUT IT IS OUR VIEW THAT THE SPIRIT IF NOT THE LETTER OF THAT PROVISION WOULD BAR DISCRIMINATORY PRICING OF FUEL UPLIFTED AT THE AIRPORTS OF THE RESPECTIVE PARTIES.

(E) ARTICLE 7 DOES MENTION TAXES ON SALES OF FUEL AND LUBRICANTS AND PROVIDES FOR EXEMPTION OF SUCH TAXES ON A BASIS OF RECIPROCITY. WE UNDERSTAND THAT U.S. CARRIERS ARE PRESENTLY PAYING TAXES ON FUEL UPLIFTED IN COLOMBIA. UNDER SECTIONS 309 AND 317 OF THE U.S. TARIFF ACT OF 1930 AND SECTION 4221 OF THE U.S. INTERNAL REVENUE CODE, AIRCRAFT OF FOREIGN REGISTRY ARE EXEMPTED FROM THE PAYMENT OF CUSTOMS DUTIES AND INTERNAL REVENUE TAXES ON SUPPLIES INCLUDING FUEL AND LUBRICANTS PROCURED IN THE U.S. DOMESTIC MARKET FOR USE BY SUCH AIRCRAFT IN THEIR OPERATIONS TO AND FROM THE U.S. THESE EXEMPTIONS ARE CONDITIONED ON A FINDING OF RECIPROCITY BY THE SECRETARY OF COMMERCE. HENCE, UNDER APPLICABLE U.S. LAW, THE SECRETARY OF COMMERCE MAY BE REQUIRED TO LIFT AN EXEMPTION GRANTED TO A FOREIGN CARRIER WHOSE GOVERNMENT DENIES RECIPROCAL TREATMENT TO U.S. CARRIERS. IF AVIANCA WERE TO LOSE ITS TAX-EXEMPT STATUS UNDER THE ABOVE LAWS AND REGULATIONS, IT WOULD BE DENIED (1) A TAX REFUND ON PURCHASES OF DOMESTIC U.S. FUEL; AND (2) ACCESS TO BONDED FUEL. FYI: THIS COULD EFFECTIVELY CUT OFF AVIANCA'S FUEL SUPPLIES IN U.S. END FYI. ADDITIONALLY, PER PARA 4 OF STATE 11745, IT SHOULD BE NOTED THAT FEA MAY MAKE ADJUSTMENTS IN ALLOCATIONS OF DOMESTIC FUEL LIMITED OFFICIAL USE

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TO AVIANCA (BONDED FUEL IS EXPRESSLY EXCLUDED FROM FEA JURISDICTION) IF AFTER CONSULTING OTHER U.S. AGENCIES, IT SHOULD FIND DISCRIMINATION IN THE ALLOCATION OR PRICING OF FUEL AGAINST A U.S. CARRIER BY GOC.

(F) DEPT APPRECIATES THAT COMPLETE ECONOMIC EQUALITY IS NOT POSSIBLE AND IS NOT AN ISSUE IN THE INSTANT CASE. WE DO HOWEVER OPPOSE POLICIES OF OTHER GOVERNMENTS

WHICH DENY US CARRIERS A FAIR AND EQUAL OPPORTUNITY TO
COMPETE IN THEIR MARKETS. WE THEREFORE REQUEST THAT
STEPS BE TAKEN TO REMOVE THOSE PRACTICES.

2. BOTH TAX AND PRICE DISCRIMINATION ISSUES DISCUSSED
ABOVE SHOULD BE RAISED AT APPROPRIATE LEVELS OF GOC.
DEPT SUGGESTS THAT FORMAL NOTE BE SUBMITTED TO GOC

COVERING THESE POINTS BUT LEAVES TO EMBASSY DISCRETION
WHETHER NOTE IS BEST MEANS OF CONVEYING US POSITION. INGERSOLL

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